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10/600,774	06/20/2003	Bryan Keith Feller	9281	5936

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/600,774
Filing Date: June 20, 2003
Appellant(s): FELLER ET AL.

Jason J. Camp
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 20, 2007 appealing from the Office action mailed June 7, 2007.

(1) Real Party in Interest

The real party in interest in The Procter & Gamble Company.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on August 30, 2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,865,596	WEISMAN et al	09-1989
6,329,465	TAKAHASHI	12-2001
2002/0013565	CINNELLI et al	01-2002
2002/0065498	OHASHI et al	05-2002
5,297,512	WADE et al	10-1960

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisman et al (U.S. Patent No. 4,865,596) in view of Takahashi (U.S. Patent No. 6,329,465).

With respect to **claim 1**: Weisman teaches an absorbent article having a. a facing layer 61 having a first elastic modulus and comprised of cotton or paper (taught by reference to U.S. Patent No. 4,619,649 to Roberts) thereby making the lining liquid-permeable; b. an absorbent core 65 is attached to facing layer 61 at substantially the entirety of the interfacial area adjacent facing layer 61, and has a second elastic modulus. With respect to item c., Weisman teaches that the elastic modulus of the fibers that core 65 is comprised of (second modulus) is 0.1×10^{10} dynes/cm² (14,503 psi). ('596, Col. 6, lines 61-63) With respect to item d., outer layer 60 is joined to the lining layer 61 at each layer's periphery, and Weisman teaches by reference to Roberts that the outer layer 60 is comprised of a thin, plastic liquid impermeable material.

With further respect to item a, Weisman does not teach a facing layer that comprises a topsheet and a secondary topsheet. Takahashi teaches a multi-layer liner material comprised of ethylene copolymer layers manufactured from elastic fibers identical to the composition of the instant invention that are produced by nonwoven processes, thus Takahashi teaches a facing layer material comprising a topsheet and a secondary topsheet. (Col. 46, lines 15-20) Takahashi teaches that this film has excellent transparency, mechanical strength and moldability. (see Abstract) It would be obvious to one of ordinary skill in the art to modify the article of Weisman by substituting the instant liner material taught by reference to Roberts (incorporated by reference in Takashi) with the liner material taught by Takahashi to provide a facing layer with increased transparency, strength and moldability.

With further respect to item c., Weisman does not teach a first modulus for the lining layer 61. Takahashi teaches a fluid permeable substrate comprised of an ethylene copolymer suitable for use as a liner layer in an absorbent article having an first elastic modulus of less than 15,000 psi ('465, Col. 54, lines 20-26), such range containing values that are greater than the said second modulus for the absorbent core taught by Weisman. The motivation to combine the teachings of Weisman and Takahashi is stated *supra*.

With respect to **claim 4**: Weisman teaches that the density of core 65 is in the range of 0.006 – 0.1 g/cc. ('596, Col. 17, lines 24-30)

With respect to **claim 5**: Weisman teaches a caliper for the absorbent core (second caliper) in the range of 0.46 – 3.1 cm. Takahashi teaches a laminate ethylene copolymer film having a thickness of 1.5 mm. The combined teaching of Weisman and Takahashi teaches a ratio of facing layer caliper to absorbent core caliper of between 4.8:100 (or approximately equal to

1:20) to 32:100, or 1:3. (Col. 28, lines 23-34) The motivation to combine the teachings of Weisman and Takahashi is stated *supra* with respect to claim 1.

With respect to **claim 6**: Weisman teaches a catamenial device as absorbent articles that the absorbent core of the instant invention is usable with. ('596, Abstract)

With respect to **claim 11**: Weisman does not teach a secondary topsheet and thus does not teach a secondary topsheet that is a nonwoven web. Takahashi teaches a laminate liner material comprised of ethylene copolymer layers manufactured from elastic fibers of the composition of the instant invention that are produced by nonwoven processes, thus Takahashi teaches a facing layer material comprising a topsheet and a secondary topsheet, wherein the secondary topsheet is a nonwoven web. (Col. 46, lines 15-20, Col. 70, lines 59-61, Col. 72, lines 59-61, Col. 73, lines 19-22) The motivation to combine the teachings of Weisman and Takahashi is stated *supra* with respect to claim 1.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weisman ('596) in view of Takahashi ('465) as applied to claim 1 above, and further in view of Cinelli et al (U.S. Patent Application Publication No. 2002/0013565).

With respect to **claim 10**: The combined teaching of Weisman and Takahashi does not teach a secondary topsheet. Cinelli teaches an absorbent article comprising a multilaminate elastomeric nonwoven topsheet. ('565, ¶ 0095) Cinelli teaches that this topsheet is apertured so as to be pervious to exudates yet nonabsorbent thereby preventing rewet. ('565, ¶ 0092) A multilaminate structure would have enhanced magnitudes of these characteristics, therefore it would be

obvious to one of ordinary skill in the art to modify the facing layer of the combined teaching of Weisman and Takahashi so as to be a multilaminate apertured film structure as taught by Cinelli so as to prevent rewet.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weisman ('596) in view of Takahashi ('465) as applied to claim 1 above, and further in view of Ohashi et al ('498).

With respect to **claim 15**: The combined teaching of Weisman and Takahashi does not teach a pair of deep-embossed channels. Ohashi teaches an absorbent article comprising a pair of deep-embossed grooves 15 defining an effective width (Fig. 2) ('498, ¶ 0013). Ohashi teaches that these grooves collect any exudates traveling toward the side edge, preventing leakage. Therefore it would be obvious to modify the article of the combined teaching of Weisman and Takahashi so as to have an absorbent structure inside an undergarment which contains a pair of transversely opposed grooves to prevent leakage as taught by Ohashi to prevent leakage. ('498, ¶ 0016)

With respect to **claim 16**: Ohashi teaches that the width of the channels is between 2-20 mm, but also teaches that the grooves can be widened, therefore Ohashi teaches widths greater than 20 mm. ('498, ¶¶ 0005, 0015) The motivation to combine the teachings of Weisman and Takahashi and Ohashi is stated *supra* with respect to claim 15.

(10) Response to Argument

Applicant's arguments filed December 20, 2007 have been fully considered but they are not persuasive.

With respect to arguments regarding the rejection of claims 1, 4-6 and 11 as unpatentable over Weisman in view of Takahashi: Applicant argues that there is not motivation to modify the article of Weisman by substituting the instant facing layer with that is Takahashi, which is used for packaging red meat. This is not persuasive because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Further, a packaging for fresh red meat is only one use cited by Takahashi. Applicant is referred to Col. 73, lines 19-30, wherein Takahashi teaches that the elastic fiber and fabric disclosed can be used in the production of composite articles such as diapers Takahashi also discloses in col. 73, lines 31-33 that "the novel elastic fiber and fabric disclosed in this specification are also employable for various structures as described in U.S. Patent No. 2,957,512 to Wade". Wade teaches an elastic composite fibrous material that can certainly be used as a topsheet material in the article of Weisman, as such elastomeric composite materials are often used for components in a diaper.

As to applicant's argument that Takahashi does not teach a fluid permeable layer because Takahashi only teaches that the film is oxygen-permeable, this is not persuasive because oxygen, as a gas, is also a fluid. Applicant defines "fluid" in exemplary terms in the disclosure by referring to bodily fluids and does not explicitly exclude gasses as being viable fluids. As to applicant's argument that the film of Takahashi is water-impermeable and thus does not meet the claim limitation, it is noted that the features upon which applicant relies (i.e., that

the fluid is a specific fluid such as water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant does not explicitly address claims 4-6 or 11. Therefore it is interpreted herein that applicant's arguments with regard to claims 4-6 and 11 depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

With respect to arguments regarding the rejection of claim 10 as unpatentable over Weisman in view of Takahashi and further in view of Cinelli: Applicant's arguments with regard to dependent claim 10 have been fully considered but are not persuasive as applicant's arguments depend entirely on applicant's arguments regarding the rejection of claim 1, which have been addressed *supra*.

With respect to arguments regarding the rejection of claims 15 and 16 as unpatentable over Weisman in view of Takahashi and further in view of Ohashi: Applicant's arguments with regard to dependent claims 15 and 16 have been fully considered but are not persuasive as applicant's arguments depend entirely on applicant's arguments regarding the rejection of claim 1, which have been addressed *supra*.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

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/Tatyana Zalukaeva/

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